

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 16-011V

* * * * *

KATHLEEN BERRETT, <i>as Personal Representative of the ESTATE OF C.B., deceased,</i>	*	Special Master Corcoran
Petitioner,	*	
	*	
v.	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	Decision by Stipulation; Damages; Human papillomavirus (“HPV”) Vaccine; Transverse myelitis (“TM”).
Respondent.	*	
	*	

* * * * *

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.

Camille M. Collett, U.S. Dep’t of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 4, 2016, Kathleen Berrett filed a petition on behalf of her minor child, C.B., seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine Program”).² Petitioner alleges that C.B. suffered from transverse myelitis (“TM”) as a result of his

¹ Although this Decision has been formally designated “not to be published,” it will nevertheless be posted on the Court of Federal Claims’s website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Decision will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the whole Decision in its present form will be available. *Id*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) (“Vaccine Act” or “the Act”). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

February 1, 2014, receipt of the human papillomavirus (“HPV”) vaccine. Moreover, Petitioner alleges that C.B. experienced residual effects of this injury for more than six months.

Respondent denies that the HPV vaccine caused C.B. to suffer from TM, or any other injury or condition. Nonetheless both parties, while maintaining their above-stated positions, agreed in a stipulation (filed on November 2, 2018) that the issues before them could be settled, and that a decision should be entered awarding Petitioner compensation.

I have reviewed the file, and based upon that review, I conclude that the parties’ stipulation (as attached hereto) is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

- A lump sum of \$268,256.64 in the form of a check payable to Petitioner; and
- A lump sum of \$208,432.51, which represents reimbursement of a lien for services rendered on behalf of C.B., in the form of a check payable jointly to Petitioner and

Utah Department of Human Services
Office of Recovery Services
Case #C001359202/Team 85
515 East 100 South
P.O. Box 45025
Salt Lake City, UT 84145-0025

Stipulation ¶ 8. This amount represents compensation for all damages that would be available under Section 15(a) of the Act.

I approve a Vaccine Program award in the requested amount set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the Court is directed to enter judgment herewith.³

IT IS SO ORDERED.

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KATHLEEN BERRETT, as personal representative of the estate of C.B., deceased.)
)
)
Petitioner,)
)
v.) No. 16-11V
) Special Master Brian Corcoran
SECRETARY OF HEALTH AND HUMAN SERVICES,)
)
Respondent.)
)

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, C.B., petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to C.B.’s receipt of the human papillomavirus (“HPV”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. C.B. received an HPV vaccine on February 1, 2014.
3. The vaccine was administered within the United States.
4. Petitioner alleges that C.B. suffered transverse myelitis as a result of the HPV vaccine and that he suffered the residual effects of this injury for more than six months.¹
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of C.B. as a result of his condition.

¹ C.B. died during the pendency of this claim.

6. Respondent denies that C.B.'s alleged transverse myelitis, any other injury, or his death, was caused by his HPV vaccination.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of **\$268,256.64** in the form of a check payable to petitioner, as legal representative of C.B.'s estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a), except as set forth in paragraph 8(b); and
- b. A lump sum of **\$208,432.51**, which amount represents reimbursement of a lien for services rendered on behalf of C.B., in the form of a check payable jointly to petitioner and

Utah Department of Human Services
Office of Recovery Services
Case #C001359202/Team 85
515 East 100 South
P.O. Box 45025
Salt Lake City, UT 84145-0025

Petitioner agrees to endorse this check to Utah Department of Human Services.

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of C.B.'s estate under the laws of the State of Utah. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal representative of C.B.'s estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of C.B. at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of C.B. upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of C.B.'s estate, on behalf of herself, C.B.'s estate, and C.B.'s heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or

nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of C.B. resulting from, or alleged to have resulted from, the HPV vaccination administered on February 1, 2014, as alleged by petitioner in a petition for vaccine compensation filed on or about January 4, 2016, in the United States Court of Federal Claims as petition No. 16-11V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the items of compensation sought is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that C.B.'s alleged transverse myelitis, or any other injury or his death, was caused-in-fact by his HPV vaccination.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of C.B.'s estate.

END OF STIPULATION

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

Respectfully submitted,

PETITIONER:

Kathleen Berrett
KATHLEEN BERRETT

ATTORNEY OF RECORD FOR
PETITIONER:

RONALD C. HOMER by Mendy Daniels
RONALD C. HOMER *(Rule 83.1(c)(2))*
CONWAY HOMER, PC
16 Shawmut Street
Boston, MA 02116
(617) 695-1990

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:

Catharine E.
CATHARINE E. REEVES
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:

Ward Sorenson for
NARAYAN NAIR, M.D.
Director, Division of
Injury Compensation Programs
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 08N146B
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:

Camille M. Collett
CAMILLE M. COLLETT
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4098

Dated: 11/2/2018